

# Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

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## CASE AND COMMENT

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## The Coal Crisis.

The strike of the hard-coal miners in Pennsylvania has presented the most serious condition that has ever resulted from a labor controversy in this country. The futility of the conference called by President Roosevelt between the coal operators and the head of the labor organization left the public disappointed and excited. Wild prophecies of riots in the cities and sensational rumors of the impending seizure of the mines by Federal troops furnished newspaper headlines for several days. But underlying all this is the public conviction that some way must speedily be found to supply the public with coal. If the safety of the people is the supreme law, they will not long tolerate a quarrel between mining companies and their employees by which unspeakable suffering shall result to the public.

The attitude and temper of the representatives of the railroad and coal companies at the President's conference were very far from satisfactory. Called to consider a grave public emergency, they seemed—at least so far as their published statements indicate—incompetent to rise above

a partisan, shortsighted, and stubborn advocacy of their own selfish interests. In this respect the representative of the ignorant and bitterly denounced laborers showed himself greatly their superior. He showed fairer temper, greater public spirit, and more breadth of mind than they. He had at least the graciousness to recognize the seriousness of the suffering that would result to the public, and to express an earnest desire to end the difficulty. He made a temperate and dignified statement of his position, and made a fair offer to arbitrate the questions of difference as a condition of the immediate resumption of work. The whole tone of the published statements of the capitalists was imperious. They seemed to regard the matter as nobody's business but their own. They indicated clearly enough that they regarded the President's action as meddlesome, and retorted by demanding that he do what they alleged to be his duty. Their demand upon him was clearly absurd, for it asked him to do what the law gave him no right to do. Though called to conference for the purpose of securing harmony between conflicting interests and averting a stupendous public calamity, they responded by stubbornly pettifoggery their own case, ignoring the rights of the public, rather tartly snubbing the President, and bitterly denouncing the other party to the case.

The demand by the coal operators for the preservation of law and order is not, and cannot be made, too emphatic. To this extent their position is impregnable, and cannot be criticised except by anarchists.

### The Right to Work.

Bodies of striking workmen have become quite in the habit of assuming the authority to dictate when and on what terms other men over whom they have no legal control whatever shall work. Protesting usually that they deprecate coercion and use persuasion only, the strikers commonly resort to criminal violence against other workmen who dare to take the employment which they have abandoned. Not only among the strikers, but among large numbers of other people, there has grown up a kind of quasi approval of this high-handed and lawless tyranny of men over their fellow citizens. The right to labor, even when the legislature attempts to deny it, is so clearly protected by constitutions that no one presumes to dispute it. Even the restrictions made by statute under the police power are often held—as in *Ritchie v. People* (Ill.) 29 L. R. A. 79—to be unconstitutional because they have unduly restricted the right to work.

Whatever the justice of the demands of strikers, every attempt to enforce them by intimidating other laborers should be repressed at any cost.

### Lawfulness of Miners' Organization.

Charges are made by the coal companies that the mining laborers' association is an illegal combination or conspiracy. A vivid description is given of the crimes committed by or on behalf of the strikers in endeavoring to show that the organization was itself guilty of the perpetration of these crimes. Considering the vast body of men who are on strike, the ignorance and low grade of many of them, it is almost a surprise that greater disorder has not resulted. But the crimes which have been committed have not been shown to have been commanded or approved by the miners' organization as such. Even if they were, the use of unlawful means to carry out their purpose does not show that the organization is itself illegal any more than the too familiar use of criminal means by great railroad corporations proves that those companies are themselves illegal organizations. The notorious violations of the Interstate Commerce Law by railroad companies, which

have been repeatedly pointed out by the Interstate Commerce Commission itself, the corrupt use of funds often made by such corporations to secure or defeat legislation, their impudent defiance of law now and then in seizing forcible possession of a crossing or other coveted property and in laying tracks on Sunday to evade an injunction or other legal interference, with other acts of like nature, should be enough to deter railroad officials from endeavoring to establish the proposition that criminal acts by a corporation or association make the organization itself illegal. The community of action on the part of the great coal companies in establishing rates, which, if not illegal, has been quite commonly deemed so, and the question lately raised of the violation of the constitutional law of Pennsylvania by railroad companies engaged in the mining business, suggest that the attack by them upon the legality of the mine workers' association may be akin to the cry of "Stop thief" as a means of diverting the attention of the public in another direction.

### Federal Interference with Miners' Strike.

Several of the railroad officials contend that the miners' association is a conspiracy in restraint of trade and commerce among the several states in violation of the Sherman act, and clearly within the Debs Case. But the distinction between the present strike and that out of which the Debs Case arose is obvious. That was a railroad strike, and the United States government interfered on account of its right to protect the transportation of the mails and of interstate commerce. In the present instance neither ground of interference exists. The mining of coal, though it be done for the purpose of sending it to other states, does not constitute interstate commerce. This is the unmistakable result of the decision in *United States v. E. C. Knight Co.* 156 U. S. 1, 39 L. ed. 325, known as the Sugar Trust Case. A monopoly of the manufacture of sugar was held not to constitute a violation of the Sherman law, although the sugar was intended for interstate trade, since the manufacture itself was not a part of interstate com-

merce. The digging of coal is obviously no more a matter of interstate commerce than is the manufacture of sugar, and a monopoly to control the labor of the mining of coal is no more a monopoly against interstate commerce than was the monopoly to control the manufacture of all the sugar in the United States. The demand that the President "proceed in accordance with the precedent in the Debs Case" can hardly have been made in ignorance of the decision in the Sugar Trust Case, yet, in the light of that decision, it is an astonishing demand to make.

### Recognition of The Union.

A peremptory refusal to recognize the miners' union is so irritating and smacks so much of arrogance that it could be justified only by extraordinary reasons, and these have not been shown. Labor unions are often shortsighted and wrong in their policies and methods. Their acts are sometimes arbitrary and unjustifiable. But when business is largely controlled by great combinations of capital the organization of laborers seems to be necessary for their protection. An attempt to crush out labor unions will doubtless prove futile, but, if it could succeed, it would be a calamity. Combination on one side with a denial of the right of combination on the other is unfair. It inevitably breeds discontent and a sense of injustice. Those feelings rankling in the minds of great masses of the common people would be the inevitable result of any successful movement to crush out all labor unions. Capitalists who are stubborn and shortsighted enough to attempt such a policy are dangerous men.

### Common Carriers in The Coal Business.

The Constitution of Pennsylvania, art. 17, § 5, is as follows: "No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over its works; nor shall such company, directly or indirectly, engage in any other business than that of

common carriers, or hold or acquire lands, freehold, or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines or manufactories on its railroad or canal not exceeding 50 miles in length." The status of the great railroad companies that seem to be the parties really in interest as owners of the mines, and whose presidents were called in conference by President Roosevelt and have issued statements to the public as representing the coal operators, is sufficiently interesting. Do these companies "indirectly prosecute or engage in mining" in violation of the Constitution? In the case of Hartwell v. Buffalo, R. & P. R. Co. 19 Pa. Co. Ct. 231, the superintendent of the bureau of railways refused to certify to the attorney general a complaint that the railroad company was violating the Constitution by owning the stock of a mining company. This refusal was based on the case of *Com. v. New York, L. E. & W. R. Co.* 132 Pa. 591, 7 L. R. A. 634. But that decision decided nothing as to the scope of this constitutional provision. It only held that the ownership of stock of a mining company by a foreign corporation did not violate the Pennsylvania act of 1855, prohibiting a corporation from acquiring or holding any real estate, either directly or by or through a trustee or other device, unless authorized to hold such property by the laws of the commonwealth. Since the later act of 1839 expressly authorized railroad companies to aid mining companies by the purchase of their capital stock, such ownership of stock was held not to be in violation of the earlier act. The court said: "The act strikes only at the holding of the title, and, as it is a highly penal statute,—penal to the extent of practically confiscating all real estate held in violation thereof,—we are not at liberty to extend it beyond its terms." The constitutional provision was referred to by the court, but no decision rendered upon it because it did not have anything to do with the matter of the escheat of lands, which was all that was involved in that case. It is plain, therefore, that some very serious questions for these railroad companies may be presented by this constitutional provision.

### Referring Disputes to Judges.

The proposition by the coal operators to refer disputes with workmen to judges of the state courts is ill considered. The judges would do well to refuse, if asked to serve in that capacity. Judges of the circuit court of the United States refused at an early day to enforce an act of Congress because it required of them duties which were not judicial. See note to Hayburn's Case by Taney, Ch. J., 2 Dall. 409, 1 L. ed. 436. It is very desirable for the courts themselves, and also for the public, to confine the work of judges to matters which are judicial. There is much disagreeable assertion on the part of many of the poorer people that the courts favor the rich. This is for the most part rankly unjust, yet it would be impossible for judges to act as arbitrators in business disputes between large bodies of laborers and their employers without a certainty of dissatisfaction on the part of the laboring classes. It is bad enough to have complaints made against the courts by dissatisfied individuals. It would be infinitely worse if the decision affected a very large class of people mostly ignorant, and who would almost certainly claim more than just men could grant. The proposition to bring the courts into the adjustment of labor disputes is, therefore, one that ought never to be considered seriously.

### Needed Lessons.

It would be worth all the strike has cost in money and suffering, provided it be now settled (as at the time of going to press seems probable), if as a result of it the plain first principles of justice might be put beyond dispute. The right of every citizen, however humble, to be protected by the whole force of the government, if need be, in his right to work; the right of those who have property to have it protected against a mob; the right of the public to have peace and order maintained in time of labor disputes as well as other times; and the equality of laborers and capitalists with respect to the right of combination,—are all too clear for sane and just men to dispute; but, in spite of that there has been a surprising disposition to treat some of these matters as practically unsettled and de-

batable. To establish, not only in theory, but in actual truth, that this is a country of law and order and equal rights, and of justice to all men of every class and grade and condition, would be worth a great price.

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The part containing any note indexed will be sent with CASE AND COMMENT for one year for \$1.

## Among the New Decisions.

### Attorneys.

Independent advice is held, in *Kidd v. Williams* (Ala.) 56 L. R. A. 879, not to be necessary to enable a client to effect a binding settlement with his attorney concerning services already rendered, where the client is in a position to form an entirely free and unfettered judgment, independent altogether of any sort of control.

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### Banks.

The rule that a drawee is presumed to know his drawer's signature, and hence cannot recover back money paid through a mistake of fact upon a bill to which the drawer's signature was forged, is held, in *Woods & Malone v. Colony Bank* (Ga.) 56 L. R. A. 929, not to be available in favor of a holder who by his own negligence contributed to the success of the fraud practised, and whose conduct had a tendency to mislead the drawee, who was himself free from fault.

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### Benevolent Societies.

See CONSTITUTIONAL LAW.

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### Bills and Notes.

Giving notice of dishonor of protested paper is held, in *Williams v. Parks* (Neb.) 56 L. R. A. 759, to be, in the absence of contrary instructions, an official duty of a notary public, for neglect of which an action is maintainable upon his official bond by the party injured. Sureties on a note are held, in *Brown v. First National Bank* (C. C. A. 7th C.) 56 L. R. A. 870, to be relieved from any obligation at law, to the extent to which the payee has released collateral security without their consent or that of the maker.

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### Black Listing.

See CONSTITUTIONAL LAW.

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### Bonds.

See also LIMITATION OF ACTIONS.

Sureties on a guardian's bond, taken upon motion of a surety on a former bond for the purpose of procuring his release, are held, in *Abshire v. Salyer* (Ky.) 56 L. R. A. 936, to be liable, equally with the surety on the former bond, for past as well as future defalcation of the guardian, although the motion seeks to relieve the former surety from future liability only.

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### Boycott.

See INJUNCTION.

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### Brokers.

A broker illegally taking money as margins on a gambling transaction from an agent in whose hands it has been placed for a lawful purpose is held, in *Central Stock & Grain Exchange v. Bendinger* (C. C. A. 7th C.) 56 L. R. A. 875, to take it subject to the same trust upon which it was held by the agent, and to be liable to refund it at the suit of the principal.

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### Carriers.

A regular full-rate noncoupon railroad ticket is held, in *Louisville & N. R. Co. v. Klyman* (Tenn.) 56 L. R. A. 769, in the absence of an agreement to the contrary, to be good for a continuous passage to destination only, and if the journey necessitates a change of trains it is held that it must be continued on the next available train.

A stipulation by a common carrier, in consideration of a reduced freight rate, for exemption from liability for damage by wet to property carried is held, in *Mears v. New York N. H. & H. R. Co.* (Conn.) 56 L. R. A. 884, to be valid.

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### Case.

Competition, though malicious, if carried on to get customers away from a rival and obtain business for one's self is held, in *West Virginia Transportation Co. v. Standard Oil Co.* (W. Va.) 56 L. R. A. 894, not to be unlawful if the customers are not induced to violate their contract.

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### Cemeteries.

Real estate platted into lots and blocks and dedicated as a public cemetery, and which is appropriated and used exclusively for burial purposes, is held, in *First National Bank v. Hazels* (Neb.) 56 L. R. A. 765, to be exempt from execution and forced sale.

### Checks.

The maker of a check given, after full opportunity for investigation, in accordance with a storage contract requiring a return of the property, or "if it is destroyed to pay its value," under the belief that the property had been stolen, is held, in *State Savings Bank v. Buhl* (Mich.) 56 L. R. A. 944, to have the right to stop payment and avoid the settlement as made under a mutual mistake of fact, where the property is discovered in the storehouse the day after the check is given.

### Competition.

See CASE.

### Constitutional Law.

A delegation by the legislature to the commissioner of the bureau of labor statistics, of discretion to determine that the liability to inhalation of dust or injurious gases in particular factories can to a great extent be prevented by some mechanical device, the provision of which he shall recommend, is held in *Schaezlein v. Cabaniss* (Cal.) 56 L. R. A. 733, to be unlawful.

A statute prohibiting employers from combining for the purpose of interfering with or preventing any person, either by threats, promises, or black listing, from procuring employment, is held in *State ex rel. Scheffer v. Justus* (Minn.) 56 L. R. A. 757, not to be unconstitutional.

A statute imposing upon landowners in the city the duty of repairing sidewalks adjacent to their premises is held, in *Lincoln v. Janesch* (Neb.) 56 L. R. A. 762, not to violate any constitutional provision, and to be a legitimate exercise of the police power of the state.

A statute excepting the proceeds of a certificate of a fraternal beneficiary association from liability for the debts of the holder or beneficiary is held, in *Williams v. Donough* (Ohio) 56 L. R. A. 766, to be invalid because it confers upon such societies and their members a special privilege not given to other insurance companies, and is a denial of equal protection of the laws.

To prohibit the landing, within an infected district, of healthy persons from a

vessel coming from a foreign port, is held, in *Compagnie Francaise de Navigation A Vapeur v. State Board of Health* (La.) 56 L. R. A. 795, to be within the power of a state board of health, and not to be an unconstitutional regulation of commerce or a denial of due process of law.

The passage of a statute authorizing the issue of revenue bonds to be met by taxation, for the payment of the necessary expenses which had been previously incurred by a municipal officer in defending himself from a charge of official misconduct, is held, in *Chapman v. New York* (N. Y.) 56 L. R. A. 846, to be prohibited by a constitutional provision forbidding any municipality to give any money to any individual, or to incur indebtedness for other than municipal purposes.

The constitutional right of liberty and property is held, in *Re Davies* (N. Y.) 56 L. R. A. 855, not to be illegally impaired by requiring one to appear before a referee and furnish evidence to aid the attorney general in instituting proceedings for the suppression of a monopoly.

The fundamental rights of a municipality to local self-government are held, in *State ex rel. Geake v. Fox* (Ind.) 56 L. R. A. 893, to be infringed by a statute authorizing the governor to appoint a board which shall have control of its fire department and all matters relating to fire alarm, fire escapes, inspection of buildings, etc.

### Contracts.

See HUSBAND AND WIFE.

### Corporations.

The organizers of a corporation are held, in *Vermont Marble Company v. Deelee Granite Co.* (Cal.) 56 L. R. A. 728, to be liable to pay in for the benefit of creditors the face value of the stock issued to them, although they made no written subscription, but agreed orally that the stock should be sold to them as fully paid upon payment of a fraction only of its face value.

A majority of the stockholders of a corporation are held, in *Maynard v. Locker* (Mich.) 56 L. R. A. 947, to have no vested right to elect the directors, which will be infringed by a statute giving the minority

stockholders the power by cumulative voting to elect a representative membership in the board of directors.

### Criminal Law.

Under a statute providing that, in case of the illness and discharge of a juror in a criminal case, another may be chosen and the trial commenced anew, if the illness occurs during the process of impaneling the jury, after the accused has used some of his peremptory challenges, it is held, in *People v. Zeigler* (Cal.) 56 L. R. A. 882, that the number used must be restored to him.

### Evidence.

A street-car conductor's trip report as to fares taken is held, in *Callihan v. Washington Water Power Co.* (Wash.) 56 L. R. A. 772, to be admissible in evidence in corroboration of his testimony that he received no transfer on a trip, for alleged injuries during which an action has been brought against the company by one claiming to have ridden on that trip and to have paid fare with a transfer, where it was made before he knew of the accident or that any question as to his having taken a transfer would arise.

If a conveyance by a husband to his wife to secure her for the principal of money of her separate estate taken and used by him is attacked by his creditors as voluntary or fraudulent, it is held, in *Adoue v. Spencer* (N. J. Err. & App.) 56 L. R. A. 817, that the burden is on the wife to establish that her husband took and used her separate estate, but that when that fact is established the burden shifts, and those claiming that such taking and use were by gift of the wife are held to have the burden of establishing such gift.

### Fraud.

See SALE.

### Gaming.

See BROKERS.

### Husband and Wife.

See also EVIDENCE.

A contract between husband and wife engaged in farming, that the husband shall work for the wife and act as her agent, and that in payment for such personal services the wife shall work for the husband, and that the product of such joint labor shall be the property of the wife, is held, in *Dempster Mill Manufacturing Co. v. Bundy* (Kan.) 56 L. R. A. 739, to be contrary to public policy and void.

Property purchased by a man in the name of his wife, with proceeds from a business which he is conducting as her agent, the success of which is due largely, if not wholly, to his supervision and industry, is held, in *Blackburn v. Thompson W. & Co.* (Ky.) 56 L. R. A. 938, to be subject to his debts.

### Injunction.

A local incorporation of a Young Women's Christian Association, affiliated with the international conference, is held, in *International Committee of Young Women's Christian Associations v. Young Women's Christian Association* (Ill.) 56 L. R. A. 888, to be entitled to enjoin the use, by an independent organization subsequently incorporated, of a similar name for the purpose of leading the public, from whom it expects support by way of donations, to believe that it represents the former association.

An injunction against a boycott of a manufacturer by inducing merchants not to deal with him pending trouble with his employees is held, in *Marx & Haas Jeans Clothing Co. v. Watson* (Mo.) 56 L. R. A. 951, to be in violation of a constitutional guaranty of free speech and of the right to publish whatever one may choose, being responsible for the abuse of that right.

### Insurance.

See also MORTGAGE.

An insured building which is so injured by fire as to be insecure and a menace to life, and which is condemned by the city authorities and an attempt to repair prohibited by them, is held, in *Monteleone v. Royal Ins. Co.* (La.) 56 L. R. A. 784, to be a constructive total loss; and the fact that the condition after the fire is due in part to causes existing before is held to make no difference.

### Interest.

The deducting of interest at an unlawful rate by a national bank from the amount placed to the credit of one for whom a note is discounted is held, in *Citizens' National Bank v. Gentry* (Ky.) 56 L. R. A. 673, not to be a payment of unlawful interest which will sustain an action to recover double its amount under the Federal statute, but to be merely a taking, reserving, or charging of such interest under a clause relating to forfeiture.

### Judgment.

See LIMITATION OF ACTIONS.

### Judicial Sale.

A bona fide purchaser at sheriff's sale, who has paid the purchase money without notice of an equity, is held, in *Johnson v. Equitable Securities Co.* (Ga.) 56 L. R. A. 933, to be entitled to protection against the same.

### Limitation of Actions.

The statute of limitations against an action on a judgment is held, in *Citizens' National Bank v. Lucas* (Wash.) 56 L. R. A. 812, to begin to run from the time of its rendition, and not from the expiration of the time during which execution can be issued on it.

A surety on the bond of an officer of a corporation is held, in *McMullen v. Winfield Bldg. & L. Asso.* (Kan.) 56 L. R. A. 924, to have no right to invoke the aid of the statute of limitations against liability thereon, on the ground that he was innocent of the fraud, where the statute does not begin to run in favor of the principal, because of his fraud in concealing his defalcations.

### Master and Servant.

See also MUNICIPAL CORPORATIONS.

An engineer operating a blow-off cock de-

signed to clean the boiler, for the purpose of frightening children, is held, in *Alsever v. Minneapolis & St. L. R. Co.* (Iowa) 56 L. R. A. 748, not to depart from his employment so as to relieve his employer from liability for injuries caused by his act.

### Mines.

Where a secondary or accidental vein crosses a common side line between two mining locations at an angle, with an apex of such width that for a distance it is partly within each claim, it is held, in *St. Louis Min. & Mill. Co. v. Montana Min. Company* (C. C. A. 9th C.) 56 L. R. A. 725, that for the purpose of determining the right to such portion, together with the right to follow its dip, the apex will be regarded as exclusively within the older location.

### Mistake.

See CHECKS.

### Mortgage.

See also TRUSTS.

A grantee's agreement to take the premises subject to a mortgage debt is held, in *Farmers' Loan & Trust Co. v. Penn Plate Glass Co.* (C. C. A. 3d C.) 56 L. R. A. 710, not to make him liable either to the mortgagee or to his grantor, for the performance of the latter's covenant to insure the premises for the mortgagee's benefit; and the mortgagee is held to have no lien on the proceeds of insurance taken by the grantee for his own benefit.

A mortgage in the name of a fictitious person is held, in *Blackman v. Henderson* (Iowa) 56 L. R. A. 902, to be, as between the landowner who executes it and the mortgagee, a valid instrument, and to create a valid lien on the property.

### Municipal Corporations.

See also CONSTITUTIONAL LAW.

A municipality is held, in *Peterson v.*

Wilmington (N. C.) 56 L. R. A. 959, not to be liable for injuries to an employee of its fire department because of its negligence in permitting apparatus to get out of repair, since its duties with respect to extinguishment of fires are public and governmental.

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**Name.**

See INJUNCTION.

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**Public Improvements.**

Failure of a street improvement to meet the requirements of specifications because of want of thickness of the pavement, inferior quality of materials used, and neglect to plaster the curb walls, is held, in *People ex rel. Raymond v. Whidden* (Ill.) 56 L. R. A. 905, not to be available to taxpayers in defense of the enforcement of an assessment therefor, if the improvement has been accepted by the proper authorities.

One against whom a special assessment for a street improvement has been made is held, in *Gage v. People ex rel. Raymond* (Ill.) 56 L. R. A. 916, to be entitled to resist the payment thereof if the improvement ordinance required a macadam pavement, while the completed improvement is no more than a dirt or mud roadway.

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**Railroads.**

See TRIAL.

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**Sale.**

Breach of warranty of the speed of a steamboat is held, in *H. W. Williams Transportation Line v. Darius Cole Transportation Co.* (Mich.) 56 L. R. A. 939, to be no ground for rescinding an executed contract to purchase it, and suing for a return of the purchase price.

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**Street Railways.**

A street railway company which permits cars of another company to be run over its tracks under a mere traffic arrangement is

held, in *Sias v. Rochester R. Co.* (N. Y.) 56 L. R. A. 850, not to be liable for the death of a passenger of the latter company, caused by collision with a tree beside the track, although it has laid its tracks so close to a line of standing trees that faulty construction of a car or negligent management may bring a passenger into collision with them, if by the exercise of care they can be passed in safety.

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**Sunday.**

A complaint filed on Sunday and a summons issued by the clerk of the court is held, in *Havens v. Stiles* (Id.) 56 L. R. A. 736, to be a ministerial act, and not prohibited by a statute forbidding transaction of judicial business on Sunday.

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**Telegrams.**

One who delivers to a telegraph company for transmission a message written on the blank of another company which contains printed instructions that the message shall be sent subject to the terms and conditions printed on the back thereof is held, in *Western U. Teleg. Co. v. Waxelbaum* (Ga.) 56 L. R. A. 741, to be bound by the reasonable conditions therein set out, the delivery and acceptance of such a message being in effect an adoption by the parties of the blank contract made in the name of the other company.

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**Trial.**

The question whether or not a person in pursuit of a cow which has escaped from his control acts as an ordinarily prudent man would act under the circumstances, in not looking and listening before attempting to cross a railroad track, so as not to be chargeable with contributory negligence in case he is injured by a train is held, in *Lorenz v. Burlington, C. R. & N. R. Co.* (Iowa) 56 L. R. A. 752, to be for the jury.

Whether or not a difference of 3 inches in height between a concrete sidewalk and an adjoining gravel one is such a defect as to render the municipality liable for injury to a traveler caused by stumbling over the inequality is held, in *Watertown v. Greaves*

(C. C. A. 1st C.) 56 L. R. A. 865, to be a question for the jury.

### Trusts.

The relation which the indorser of a note secured by mortgage holds to the mortgagee is held, in *Opie v. Pacific Investment Co.* (Wash.) 56 L. R. A. 778, not to be that of a trustee or fiduciary, so as to require him to disclose to the mortgagee knowledge possessed by him as to the value of the mortgage, when as agent he attempts to buy it for a third person.

### Usury.

See INTEREST.

### Waters.

The pollution of a stream by the discharge therein of waste from strawboard works, rendering the water unfit for domestic use or for cattle to drink, and causing the emission of noxious and offensive odors injurious to health and comfort, is held, in *Weston Paper Co. v. Pope* (Ind.) 56 L. R. A. 899, not to be excused by the fact that the business is conducted in a skilful manner and without negligence.

### Wills.

A woman's subsequent marriage is held, in *Kelly v. Stevenson* (Minn.) 56 L. R. A. 754, not to revoke a will made by her, the rule of the common law to the contrary having been abrogated by a statute conferring on married women testamentary capacity.

### New Books.

"Dill on New Jersey Corporations." 4th Ed. Revised and Enlarged. (Baker, Voorhis & Co., New York.) 1 Vol. \$3.

"The Modern Law of Municipal Corporations." By John W. Smith. A Second Edition of Beach on Public Corporations. (The Bowen-Merrill Co., Indianapolis, Ind.) 2 Vols. \$12.

"Taylor on Private Corporations." 5th Ed. The Banks Law Publishing Co., New York.) 1 Vol. \$6.

"Curious Cases." Compiled and Edited by B. A. Milburn. (The Michie Company, Charlottesville, Va.) 1 Vol. \$3.

"The Health Officers' Manual and Public Health Law of the State of New York." As Amended to the Close of the Legislative Session of 1902, with Annotations, Forms, and Cross-References. By L. L. Boyce. (Matthew Bender, Albany, N. Y.) 1 Vol. \$2.50.

"Greene's Practice Time Table." 2d Ed. (Matthew Bender.) 1 Vol. \$2.

Gilbert on the "Domestic Relations Laws of the State of New York." 2d Ed. Revised, Enlarged, with Forms. (Matthew Bender.) 1 Vol. \$3.

"Index Digest of the New York Supreme Court Reports." Containing All Decisions of the General Term and Appellate Division from 1869 to 1902. With Table of Statutes Cited and Cases Affirmed or Reversed. By Henry G. Danforth. (Banks & Company, Albany, N. Y.) 2 Vols. \$15.50.

"Mason on Highways." (Banks & Co.) 1 Vol. Sheep \$2.50. Buckram \$2.

"Hardwicke's Trial Lawyers' Assistant in Criminal Cases." (Banks & Co.) 1 Vol. \$3.

"Cases on the Conflict of Laws." By Prof. J. H. Beale, Jr. (The Boston Book Co., Boston, Mass.) 3 Vols. \$10.50.

"Index and Tables of Cases to English Ruling Cases." Vol. 25 (Boston Book Co.) \$3.50.

"Cases on International Law." By James B. Scott. (The Boston Book Co.) 1 Vol. \$3.50.

"The Law of Intercorporate Relations." By Walter C. Noyes. (Little, Brown & Co., Boston, Mass.) 1 Vol. \$5.

"Crocker's Notes on Common Forms." A Book of Massachusetts Law, with Index of Massachusetts Reports down to Vol. 178. (Little, Brown & Co.) 1 Vol. \$5.

### Recent Articles in Law Journals and Reviews.

"Growth of Federal Authority over Interstate Commerce."—64 Albany Law Journal, 311.

"The Growth of the Hearsay Rule, with

a Tabular Exposition of Its Exceptions."—64 Albany Law Journal, 307.

"Power of State Legislatures to Fix the Minimum Amount of Wages to Coal Miners."—22 Law Register, 620.

"The Authority of *Allen v. Flood*."—1 Michigan Law Review, 28.

"Eligibility to Office. As of What Time Determined."—1 Michigan Law Review, 17.

"Preferences Arising from Trust Relations."—1 Michigan Law Review, 1.

"The Young Barrister in Court."—55 Central Law Journal, 225.

"Power of Board of Trades to Settle Business Disputes of Its Members under Its By-laws."—17 Chicago Law Journal, 636.

"Is a Fire Insurance Policy a Promissory Note Payable in Event of Fire?" 30 Rough Notes, 494.

"Certificates of Stock and herein of the Relative Rights of an Attachment Creditor and a Prior Unrecorded Transferee."—55 Central Law Journal, 243.

"Power of the State to Fix the Minimum Rate of Wages to be Paid Workmen under Contracts of Private Employment."—55 Central Law Journal, 242.

"The Gaynor and Greene Extradition Proceedings."—22 Law Register, 652.

"The Purchase of Drafts with Bills of Lading."—19 Banking Law Journal, 609.

"The Negotiable Instruments Law; a Course of Study."—19 Banking Law Journal, 599.

"The Doctrine of Reasonable Doubt."—55 Central Law Journal, 263.

"Right to Recover on a Mortgage Which has been Transferred by the Mortgagee to, or Executed in Favor of, a Resident of Another State for the Purpose of Evading Taxation."—55 Central Law Journal, 201, 261.

"The German Judiciary." I. — 17 Political Science Quarterly, 490.

"The Scientific Basis of Imperialism."—17 Political Science Quarterly, 460.

"Early Trusts in Holland."—17 Political Science Quarterly, 381.

"Do Trade Unions Limit Output?"—17 Political Science Quarterly, 369.

"To What Extent and in What Cases May Damages be Recovered for Mental Suffering."—55 Central Law Journal, 202.

"Use of Streets by Telegraph and Tele-

phone Companies."—17 Chicago Law Journal, 614.

"The Negotiable Instruments Law."—41 American Law Register, N. S. 437.

## The Humorous Side.

**LAWYER AND JAIL ROBBER.**—The following is the professional card of a West Virginia lawyer whose portrait showing a typical African face adorns the reverse of the card: Compliments of.....

JAMES KNOX SMITH,

LAWYER AND JAIL ROBBER.

*Practice in all the Courts of Virginia and West Virginia.*

*Keystone, McDowell County, West Virginia.*

I delight in defending the poor and those whom I believe to be innocent when my fees are secured. My motto is, Quick Collections Upon all Claims and Prompt Remittance Made in Cold Blood. The Bible says to prove all things and hold fast to that which is good. Therefore, Brethren, seek me early as your counsellor, for know yee that even the righteous cannot be saved without an advocate.

**MISSOURI BUCOLICS.**—A Missouri farmer, whose hog had been killed by a train, and who imagined himself to be something of a poet, wrote these lines to the company's claim agent for a settlement: —

My razorback strolled down your track  
A week ago to-day;  
Your 29 came down the line  
And snuffed his light away.

You can't blame me—the hog, you see,  
Slipped through a cattle gate;  
So kindly pen a check for ten,  
The debt to liquidate.

He was rather surprised a few days later to receive the following:

Old 29 came down the line  
And killed your hog, we know;  
But razorbacks on railroad tracks  
Quite often meet with woe.

Therefore, my friend, we cannot send  
The check for which you pine.  
Just plant the dead; place o'er his head:  
"Here lies a foolish swine."

—Milwaukee Wisconsin.

